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RE: Constitutional Voting Rights Issues Raised by Municipal Referendum for Creation of New School District Authorized by Utah Senate Bill 30

Dear Mayors Caroon, Cullimore, Dolan, Seghini, Smith, and Pollard:

You have asked me to render my opinion as an independent expert in constitutional law on certain questions about the constitutionality of Utah Senate Bill 30, "Creation of New School Districts Amendments" ("S.B. 30"), *available at* <<http://le.utah.gov/~2007/htmdoc/sbillhtm/sb0030s01.htm>>, *codified at* UTAH CODE ANN. §53A-2-117 & -118 (Supp. 2007), a copy of which is attached hereto as Appendix 1. Among other things, S.B. 30 amended the Utah Code to permit a city located within an existing school district to initiate the formation of a new school district from within the existing district, upon the affirmative vote of those residing within the boundaries of the proposed new district, and without providing for a comparable vote by those residing in the remainder of the existing district.¹

¹ See UTAH CODE ANN. §53A-2-118(2)(a)(iii) (providing that the process of creating a new school district may be initiated "at the request of a city within the boundaries of the [existing] school district"); *id.*, §53A-2-118(5) (providing that upon county certification of a city's request for a new school district under subsection (2)(a)(iii), such request shall be

Specifically, you have asked me to give (i) my opinion on whether the failure of S.B. 30 to require that the formation of a new school district be approved by voters residing within the existing district, but outside of the proposed new district, deprives those voters of their fundamental right to vote in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and (ii) my evaluation of the opinion of counsel to the Jordan School District, dated May 15, 2007 [hereinafter the “Jordan District Opinion”], a copy of which is attached hereto as Appendix 2, which concluded that S.B. 30 “probably violates the Equal Protection Clause of the United States Constitution by violating the ‘one person, one vote’ rule.” *Id.* at 10.

I have concluded that (i) it is highly unlikely that the courts would rule that the Equal Protection Clause requires the approval of any voters residing outside the boundaries of a new school district proposed to be formed under S.B. 30, and (ii) the Jordan District Opinion to the contrary is incorrect and unsupported by the relevant case law and authorities. Accordingly, it is my opinion that S.B. 30's restriction of voting rights in an approval referendum to those residing within the boundaries of a proposed new school district does not violate the equal protection mandate of “one person, one vote” with respect to those residing outside such boundaries.

The basis for these conclusions and opinion is set forth below. These conclusions and opinion relate to a facial challenge to S.B. 30 under the Equal Protection Clause, and might apply differently to an as-applied challenge based on the facts of a particular S.B. 30 referendum. I also refer below to the Informal Legal Opinion of the Utah Attorney General, dated July 17, 2007 [hereinafter the Attorney General Opinion], a copy of which is attached hereto as Appendix 3, which concluded that “there is a substantial likelihood that the courts will uphold S.B. 30” against, *inter alia*, a federal constitutional voting rights challenge, *id.* at 2.

FEDERAL CONSTITUTIONAL VOTING RIGHTS ANALYSIS OF S.B. 30

A. Supreme Court Precedent Regarding Voting Restrictions in Referenda for Governance of State Political Subdivisions

The key Supreme Court decisions governing the constitutionality of S.B. 30 under the “one person, one vote” principle are *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), *Town of Lockport v. Citizens for Comm. Action at the Local Level*, 430 U.S. 259 (1977), and *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978).

1. Hunter v. City of Pittsburgh (1907).

submitted to “the legal voters residing within the proposed new school district boundaries,” and the new school district shall be created upon the approval of a majority of voters residing within its proposed boundaries, the county’s filing of a notice with the state, and the state’s issuance of a certificate). The Informal Legal Opinion of the Utah Attorney General, dated July 17, 2007, at 1, summarizes additional provisions of S.B. 30.

In *Hunter*, Pittsburgh annexed a much smaller adjoining city by means of a voter referendum in which the vote totals of both cities were combined to create a majority in favor of annexation. 207 U.S. at 174-75. Residents of the smaller city challenged the constitutionality of combining the totals, pointing to the fact that voters in the smaller city disapproved annexation by a wide margin, and arguing that annexation should have been conditioned on the approval of concurrent majorities, rather than a combined majority, of both cities. *Id.* at 177. The Court unanimously rejected this challenge, holding that the States are vested with largely unrestricted power to determine the boundaries and manner of formation of counties, cities, and other subdivisions of State government. *Id.* at 178-79. It further declared as “settled” doctrine that a State may, “at its pleasure,”

expand or contract the territorial area [of a municipal corporation], unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its power, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.

Id.

Voting rights decisions rendered after *Hunter* placed two limitations on its expansive articulation of State plenary power over political subdivisions. First, the States and their subdivisions are prohibited from drawing boundaries and creating forms of government that discriminate on an invidious or suspect basis. *See, e.g., Gomillion v. Lightfoot*, 364 U.S. 339 (1987) (invalidating city’s re-drawing of its boundaries to exclude virtually all African Americans).²

Second, the Equal Protection Clause also prohibits States from restricting or diluting the votes of subdivision residents in violation of the “one person, one vote” principle articulated by *Reynolds v. Sims*, 377 U.S. 533 (1964), and its progeny. This maxim originated with the Supreme Court’s invalidation of once-common state electoral systems that gave “the same number of representatives to unequal numbers of constituents.” *See id.* at 563.

A corollary of “one person, one vote” is the requirement that persons residing within the

² Neither the Jordan School District nor the Attorney General suggested that S.B. 30 has the purpose or effect of discriminating on an invidious or suspect basis, and I am unaware of any evidence or indication to the contrary. Accordingly, I have not analyzed S.B. 30 in this regard.

boundaries of a political subdivision are presumptively entitled to vote in elections for subdivision representatives and in voter referenda involving other matters of general electorate interest. *See, e.g., City of Phoenix v. Kolodziejski*, 399 U.S. 204, 209-10 (1970) (general obligation bond referendum affecting all city residents); *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 627-28 (1969) (election of public school district representatives). Even in such elections and referenda, however, it is presumed that subdivisions may restrict the right to vote on the basis of age, citizenship, and residence. *See, e.g., Hill v. Stone*, 421 U.S. 289, 295, 297 (1975); *Kramer*, 395 U.S. at 625.³

Subject to these two constitutional limitations, *Hunter* remains good law. *See, e.g., Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47 (1994) (“[U]ltimate control of every state-created entity resides with the States, for the State may destroy or reshape any unit it creates. [P]olitical subdivisions exist solely at the whim and behest of their States.”) (citing *Hunter*) (internal quotation marks omitted); *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978) (observing that although *Hunter* has “undoubtedly been qualified by the holdings of later cases,” it “continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various types of political subdivisions and conferring authority upon them”); *see Town of Lockport v. Citizens for Comm. Action*, 430 U.S. 259, 271 (1977) (citing *Hunter* for the proposition that “one person, one vote” did not prevent a State from conditioning municipal annexation on approval by concurrent majorities consisting of voters residing in the annexing city, and voters residing in the area to be annexed).

2. *Town of Lockport v. Citizens for Community Action at the Local Level* (1977).

Lockport involved equal protection voting rights challenges to State constitutional and statutory provisions which required that amendments to a county’s governing charter be approved by separate majorities of (i) voters residing in cities incorporated within the county, and (ii) voters residing everywhere else in the county. 430 U.S. at 260-62. These provisions blocked

³ In some tension with this general rule is a line of cases holding that the franchise may be limited in so-called “special interest elections,” even as to persons residing within a political subdivision, when (i) the subdivision does not exercise general government powers, and (ii) the limited governmental powers exercised have a substantial and disproportionate impact on some residents compared to others. *See, e.g., Ball v. James*, 451 U.S. 355 (1981) (upholding limitation of voting rights in water district election to owners of property within the district); *Sayler Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973) (same). Although one could argue that referenda restricted to school district boundary questions are “special interest” elections governed by this line of cases, *see, e.g., Moorman v. Wood*, 504 F.Supp. 467, 474 (E.D.Ky. 1980), Supreme Court precedent suggests that school districts should be treated as political subdivisions exercising general governmental powers, *see, e.g., Hadley v. Junior Coll. Dist.*, 397 U.S. 50 (1971) (finding that junior college district was such a subdivision); *Kramer*, 395 U.S. at 621 (same with respect to public school district). Accordingly, I have not addressed the question whether S.B. 30’s differential allocation of voting rights might be justified under the foregoing line of cases.

approval of a county charter amendment despite the fact that a substantial majority of county voters vote in favor of it, because a narrow majority of noncity-dwelling voters opposed it. *Id.* at 262-63. The plaintiffs were county residents who argued that the State’s concurrent-majority requirement violated the “one person, one vote” principle, by giving equal electoral weight to different bodies of voters that differed drastically in numbers. 439 U.S. at 263-65.

Acknowledging that its prior decisions had applied the Equal Protection Clause to require the equal weighing of votes in elections for government representatives, the Court found these decisions largely irrelevant to the question whether a State may constitutionally recognize “distinctive voter interests” in a single-issue voter referendum. *Id.* at 265, 266. In a referendum, the Court reasoned, the will of the voters is expressed directly rather than through representatives, so the problem of unequal representation simply does not arise.⁴ *Id.*

Additionally, the Court held that when a referendum involves a single discrete issue, it is possible to determine “whether its adoption or rejection will have a disproportionate impact on an identifiable group.” *Id.*, at 266. Accordingly, the Court read its prior decisions as permitting differential state treatment of voter groups in a voter referendum, when “there is a genuine difference in the relevant interests of the groups that the state electoral classification has created,” so long as any resulting “enhancement of minority voting strength” is not attributable to “invidious discrimination.” *Id.* at 268.

Although it did not expressly state that it was applying rational basis review, *Lockport*’s application of its “genuine electoral difference” test is notable for its lack of rigor. The Court cited the traditionally strong presumption in favor of State power over the creation and governance of its subdivisions, *id.* at 269, 272, and speculated that under the state’s county governance scheme, changes to a county charter would frequently redistribute state power between the county and its cities differently than it would between the county and its other subdivisions.⁵ There being no

⁴ *Lockport* thus renders federal voting rights decisions involving elections for representatives, which are central to the Jordan School District’s analysis of S.B. 30, *see* Jordan District Opinion, at 4-5, 8, irrelevant to that analysis. *See* Jordan District Opinion, at 4-5, 8. The Jordan School District mentions *Lockport* only once, distinguishing it on the basis of a discredited California decision that the California Supreme Court disavowed fifteen years ago. *See id.* at 6; note 9 *infra*.

⁵ *See* 430 U.S. at 269 (observing that it “appear[s]” that the dual-majority voting requirement “rest[s] on the State’s identification of the distinctive interests of the residents of the cities and towns within a county rather than their interests as residents of the county as a homogeneous unit.”); *id.* at 270 (construing the dual majority requirement as contemplating that “a new or amended county charter will frequently operate to transfer ‘functions or duties’ from the towns or cities to the county”); *id.* at 271-72 (approving the State’s apparent “perception that the real and long-term impact of local government is felt quite differently by the different county constituent units,” and suggesting that the “restructuring of county government” might make the

evidence of invidious or suspect discrimination, the Court unanimously held that the State's requirement of charter amendment approval by separate majorities of city- and noncity-dwelling voters did not violate the "one person, one vote" requirement of the Equal Protection Clause, because it does "no more than recognize the realities of [the] substantially differing electoral interests" of these two groups of voters in charter amendments. 430 U.S. at 272-73 & n.18.

3. *Holt Civic Club v. City of Tuscaloosa* (1978).

Holt, decided only one year after *Lockport*, applied *Lockport*'s holding in the context of State subdivision boundaries. The plaintiffs were a small unincorporated community and its residents on the outskirts of an incorporated city. 439 U.S. at 61. State law provided that, notwithstanding their residence outside the city's boundaries and their ineligibility to vote in city elections, the community's residents were subject to the city's police and sanitary regulations, the criminal jurisdiction of city courts, and the city's licensing regulations for businesses, trades, and professions. *Id.* at 61-62. The plaintiffs claimed that the city's exercise of extra-territorial jurisdiction over nonvoting nonresidents like them was a *per se* violation of the "one person, one vote" mandate of the Equal Protection Clause. *Id.* at 62-63.

The Court observed that whether a city's decisions affected those living beyond its borders was an impossibly broad test for determining when such persons were entitled to voting rights in city elections. *Id.* at 69-70. Observing that the reach of its voting rights precedents was limited by "the geographic boundary of the governmental unit at issue," *id.* at 72; *accord id.* at 68-69, the Court held instead that a city's denial of voting rights to nonresidents like plaintiffs was subject to mere rational basis review, *id.* at 72. Finding that extending limited municipal jurisdiction over adjoining unincorporated areas was a common, effective, and inexpensive means of ensuring adequate police power regulation and criminal law enforcement in such areas, and finding further that this extra-territorial jurisdiction did not extend to property taxation, zoning regulations, or the power of eminent domain, the Court held that denial of municipal voting rights to the plaintiffs did not violate the Equal Protection Clause. *Id.* at 72-74-75.

B. *Application of the Principles of Hunter, Lockport, and Holt to S.B. 30.*

1. The Standard of Review.

In sum, *Hunter* held that States have plenary power over the formation and boundaries of their political subdivisions; *Lockport* held that in a voter referendum, States may allocate the right to vote within a political subdivision based upon their assessment of the referendum's differential impact on the electorate, and this the allocation is not subject to strict scrutiny; and *Holt* held that a city is not obligated to grant voting rights to nonresidents, even when they are significantly affected by the city's operations, and a city's refusal to grant extraterritorial voting rights is subject to rational basis review.

county and its subdivisions "more remote and less subject to the voters' individual influence").

It has been widely held by the lower courts that *Hunter*, *Lockport*, and *Holt* together established a constitutional rule that in voter referenda about State subdivision boundaries, a State's determination of differential voter interests, and its restriction of the right to vote based upon such a determination, are subject to rational basis review.⁶ This is also the view of the leading academic commentator on this issue,⁷ one of the principal local government law treatises,⁸ and the Attorney

⁶ See, e.g., *St. Louis Cty. v. City of Town & Country*, 590 F. Supp. 731, 738 (E.D.Mo. 1984) (“[I]n an annexation election, the relevant jurisdiction consists of the geographic areas to which the state has chosen to extend the franchise, as long as there is a rational basis for the state’s choice.”) (citing *Hunter*); *Moorman v. Wood*, 504 F.Supp. 467, 474 (E.D.Ky. 1980) (“[I]n granting the franchise to residents of one area, and denying it to those of another area, or giving the votes of different areas different weight, the less stringent rational basis test is the test that has been employed.”) (citing *Lockport* and *Holt*); *Givorns v. City of Valley*, 598 So.2d 1338, 1340 (Ala. 1992) (holding that State law preventing nonresidents who owned property within area to be annexed from voting in annexation referendum is subject to rational basis review) (citing *Holt*); *Board of Suprvs. v. Local Ag’y Formation Comm’n*, 838 P.2d 1198, 1204-05, 1206, 1209-10 (Cal. 1992) (citing *Hunter* for conclusion that State plenary power over its subdivisions “entitles the state to identify as differing in degree the interests of those who may vote . . . and those who may not,” reading *Lockport* as mandating a “high degree of deference due to a voting-based classification when a state undertakes the essentially political task of apportioning power among its local governmental subdivisions,” and holding that such classifications are subject to rational basis review); *City of New York v. State*, 557 N.Y.S.2d 169, 174 (N.Y. Ct. App.) (“[T]he State can legitimately adopt a geographic classification based upon the boundaries of a proposed new subdivision to be created if approved by the electorate of the smaller, but significant, separating community.”) (citing *Lockport* and *Holt*), *aff’d*, 562 N.E. 2d 118, 121 (N.Y. 1990) (observing that the Equal Protection Clause does not prohibit a State “from recognizing the distinctive interest of the residents of its political subdivisions,” and holding that allowing the vote to residents of the community seeking detachment from a city while denying it to residents of the rest of the city “is a reasonable classification based on the distinct interest” of the community seeking detachment) (4-1 dec.) (citing *Lockport*).

⁷ See Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775, 794, 797 (1992) (reading *Lockport* and *Holt* as suggesting that “where two local boundaries may each be used to delimit the electorate for purposes of the application of Equal Protection analysis, the state will be given considerable discretion in determining which boundary counts even when it operates to deny some group of affected residents an equally weighted vote, or any vote at all,” and as “granting the states broad authority to determine the territorial scope of the right to vote in elections affecting local boundaries”); *id.* at 800 (endorsing a reading of *Hunter*, *Lockport*, and *Holt* “that the Supreme Court considers the entire issue of local boundary-drawing, with its attendant impact on the scope of the right to vote, to be a matter for the political judgment of state legislatures without federal constitutional limitation or guidance”); Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Govern-*

General, *see* Attorney General Opinion, at 5-6 (paraphrasing Briffault, *supra* note 7, 92 COLUM. L. REV. at 800). I have found no cases holding that such determinations in boundary referenda are subject to strict or any other form of heightened scrutiny.⁹

Accordingly, I conclude that the proper standard of review for S.B. 30's restriction of the right to vote in municipal school district formation referenda is rational basis—that is, such restrictions

ments, 60 U. CHI. L. REV. 339, 392 (1993) (summarizing the constitutional rule established by *Hunter*, *Lockport*, and *Holt*).

[L]ocal residents have no federal constitutional right to have a local boundary change put to a popular vote. Further, although discrimination in voting rights will be subject to strict scrutiny once the franchise is provided, strict scrutiny stops at the local jurisdictional boundary line, and . . . the state will have considerable discretion in selecting the determinative boundary line.

Id.

⁸ *See* OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW § 70, at 241-42 & nn.18-19 (2nd ed. 2001) (State annexation statutes “may validly require an election under some annexation procedures and not allow election under other procedures—if the distinction has a reasonable basis. But due process has uniformly been held not to require any election at all in order for annexation to be valid.”); *see also id.*, § 73, at 253 & n.4 (observing that “the validity of [detachment] statutes has been upheld even where the consent of the inhabitants of the disconnected area need not be obtained”) (citing *Hunter*).

Other local government law treatises are silent on this issue. *See* 1 JOHN MARTINEZ, LOCAL GOVERNMENT LAW §§ 9.01 to -.03, at 1-54 (2006 & Supp. Sept. 2006); 2 EUGENE MCQUILLAN, THE LAW OF MUNICIPAL CORPORATIONS. §7:39.45, at 873-87 (2006 & Supp. July 2006).

⁹ The Jordan School District relied on a line of California cases beginning with *Fullerton Jt. Union H.S. Dist. v. State Bd. of Educ.*, 654 P.2d 168 (Cal. 1982), to support its conclusion that State restrictions of voting rights in boundary elections are subject to strict scrutiny. *See* Jordan District Opinion, at 5-8. As the Attorney General pointed out, however, *see* Attorney General Opinion, at 10, *Fullerton* was expressly disavowed by the California Supreme Court in 1992. *See Board of Suprvs. v. Local Ag’y Formation Comm’n*, 838 P.2d at 1207 (rejecting *Fullerton*’s argument that voting rights restrictions in boundary elections are subject to strict scrutiny, on the dual grounds that this conclusion was contained in a plurality opinion that has no authority as precedent, and was apparently based in part on the plurality’s suspicion that suspect discrimination played a part in the boundary change there at issue); *id.* at 1210 n.10 (noting that *Fullerton*’s argument for strict scrutiny had never been cited with approval by any court outside of California).

need only be rationally related to a legitimate State interest or goal.

2. Lower Court Precedents for S.B. 30's Voting Rights Restriction.

I found two reported decisions directly on point, *Moorman v. Wood*, 504 F.Supp. 467 (E.D.Ky. 1980), and *City of New York v. State*, 557 N.Y.S.2d 914, 916 (N.Y. Ct. App.), *aff'd*, 562 N.E. 2d 118, 121 (N.Y. 1990).¹⁰ These decisions both reviewed State determinations to restrict voting rights in so-called municipal “detachments.” A detachment is merely the reverse of the more common practice of annexation; in detachment, an identifiable portion of an existing State subdivision seeks to withdraw from the subdivision and either join itself to another State subdivision, or to form its own subdivision. *Moorman* and *City of New York* thus consider the precise issue presented by S.B. 30: Whether, in a voter referendum on proposed detachment of an area from an existing State subdivision, the Equal Protection Clause permits a State to restrict the right to vote to persons residing within the area proposed to be detached, without also extending voting rights to persons residing in the remainder of the subdivision. Both decisions hold in the affirmative.

Moorman is the earliest reported decision on the constitutionality of voting rights restrictions in detachment referenda. *See* 504 F.Supp. at 468 (observing that the “exact counterpart of this controversy has apparently not been the subject of any other judicial decision”). Several neighborhoods sought detachment from a large city and simultaneous annexation to two adjoining and much smaller cities. *Id.* at 468. State law restricted voter participation in the referenda approving these actions to residents of the detaching neighborhoods. *Id.* Several residents of the larger city argued that this State law violated the Equal Protection Clause, “because it does not permit all of the voters of [the larger city] to vote on what amounts to the deannexation of part of their city, a matter in which they claim a substantial interest.” *Id.*

¹⁰ Other supporting authorities dealing with analogous fact situations or legal issues include *Board of Supervs. v. Local Ag’y Formation Comm’n*, 838 P.2d 1198, 1211 (Cal. 1992) (holding that restriction of voter participation in municipal incorporation referendum to county residents of area proposed to be incorporated did not violate Equal Protection Clause, where county was represented on government bodies that shaped incorporation proposal); *Pet. for Detachment of Land from Morrison Comm. Hosp. Dist.*, 741 N.E.2d 683, 689–90 (Ill. Ct. App. 2000) (holding that restriction of voter participation in hospital district detachment referendum to residents of area proposed to be detached did not violate State due process clause); *Opinion of the Justices (Weirs Beach)*, 598 A.2d 864 (N.H. 1991) (declaring that restriction of voter participation in municipal detachment referendum to residents of area proposed to be detached is within State’s discretion) (advisory opinion). *See also* UTAH CODE ANN. §§ 10-2-501 to -510 (limiting voter participation in municipal incorporation referenda to county voters residing within proposed city limits); *id.*, §§ 10-2-601 to -614 (limiting voter participation in municipal disincorporation referenda to county voters residing within city limits); Utah Attorney General Opinion, at 9 (summarizing referendum voting restrictions in the Arkansas and Ohio codes identical to those of S.B. 30).

Discussing *Hunter*, *Lockport*, *Holt*, and other Supreme Court voting rights decisions, *id.* at 471-73, the court first declared that “it is the prerogative of the individual states to resolve the conflicting interests involved in annexation disputes as they see fit,” *id.* at 473. The court then identified three state interests served by the State’s decision to restrict voter participation in detachment and annexation referenda to residents of the area to be detached or annexed. First, such restrictions provided a prompt and certain resolution of “annexation wars” that had created deep political divisions within the State. *Id.* at 475. Second, given the impossibility of granting voter approval rights to everyone affected by a proposed detachment and annexation, confining such rights to the detaching area was an appropriate way of limiting such rights while still allowing voter input.¹¹ *Id.* at 476. Third, the court speculated that the State might have thought that confining voting rights in detachment and annexation referenda to residents of the affected area would provide an incentive to cities threatened with detachment actions to be more efficient in providing municipal services. *Id.* at 476-78.

The court concluded by upholding the voter restrictions against the Equal Protection challenge, citing *Hunter* for the proposition that “these difficult policy problems of local government are matters for the individual states to resolve, and the federal courts should stay out of them if principles of due process and equal protection are observed, as construed in the light of federalism.” *Id.* at 477.

City of New York involved State law that created a procedure for determining whether Staten Island should be detached from the rest of New York City. The procedure included two referenda in which the residents of Staten Island would vote on detachment and adopt a city charter, but did not provide for any voter referendum or other expression of views in New York City as a whole. 557 N.Y.S.2d at 915. The City challenged the State procedures on, *inter alia*, equal protection grounds, relying primarily on the now-discredited *Fullerton* argument that voter restrictions in State subdivision boundary actions are subject to strict scrutiny. *Id.* at 916-17; *see note 9 supra*.

The intermediate State appellate court rejected strict scrutiny, holding instead that *Hunter*, *Lockport*, *Holt*, and the Court’s other voting rights decisions provided that “the State can legitimately adopt a geographic classification based upon the boundaries of a proposed new political subdivision to be created if approved by the electorate of the smaller but significant, separating community.” 557 N.Y.S.2d at 917. The court reasoned that “the impact upon Staten Island residents would be of a significantly more substantial character” than the impact on residents of the other four boroughs of the city: “Only they will be subject to the general government powers of a City of Staten Island. This, and the State’s apparent interest in facilitating the community’s (and county’s) self-determination, amply justify a classification that prevents the residents of the other four communities from exercising a veto power over the question of secession.” *Id.*

¹¹ Despite the court’s determination that the State law needed only to satisfy rational basis review, 504 F.Supp. at 474, it labeled these first two State interests “compelling,” *id.* at 474-75, 476.

The court thus upheld the voting restriction against the equal protection challenge, observing that the remedy for voters in the rest of the city who objected to the potential detachment rested with their representatives in the legislature. *Id.* The State’s highest appellate court subsequently affirmed this holding, finding that the State’s decision to restrict voting rights to residents of Staten Island was “a reasonable classification based on the distinct interest of that subdivision of the State.” 562 N.E.2d at 121.

3. Application of Precedents to S.B. 30's Voting Restriction.

S.B. 30 provides that a city may request the formation of a new school district from within an existing district, and that this request shall be submitted to the voters residing within the boundaries of the proposed new district, but not to those residing with the remainder of the existing district. *See* note 1 *supra*. The relevant constitutional inquiry, therefore, is whether S.B. 30's differential treatment of existing district voters, based upon their residence within or without the proposed new district, is rationally related to a legitimate State goal or interest.

Democratic Self-Governance. The most likely such goal or interest is recognition of the interest in democratic self-governance possessed by residents of a proposed new district, but not by residents in the remainder of the existing district. In a referendum on the formation of a new school district from an existing school district, residents within the proposed boundaries of the new district decide whether they are to become subject to an entirely new governing subdivision of the State. *See City of New York*, 557 N.Y.S.2d at 917; *accord Board of Supervisors*, 838 P.2d at 924 (noting that municipal incorporation referendum restricted to residents of the proposed city “merely asks the affected residents to confirm that they desire self-government”). The referendum thus directly implicates the interest of such residents in the manner in which they will be governed.

By contrast, participation in a voter referendum on a new district by residents of the remainder of the existing district would not implicate their interest in self-governance. Regardless of the outcome of the referendum, such residents will continue to be subject to the form of government already in place for the existing district. Such residents obviously have interests that would be affected by the formation of a new district from within the existing district, although they are largely economic. *See Jordan District Opinion*, at 9. These interests are not and cannot be interests in self-governance, because voters have no self-governance interest in voting for the creation of a political subdivision in which they will not reside and to whose general jurisdiction they will not be subject. *See San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 34 n.74 (1973) (observing that “one person, one vote” only protects the “right to participate in elections on an equal basis with other citizens *in the jurisdiction*”) (emphasis added).

For voters residing outside the proposed boundaries of a new school district in the remainder of the existing district, the issue in a referendum on the new district is merely whether the boundaries of the existing district shall be altered. Approval and formation of the new district would necessitate a redrawing of the boundaries of the remainder of the existing district to take account of the detachment of the new district; it would also require reapportionment of representation and new

elections for the district board. *See* UTAH CODE ANN., § 53A-2-118.1(3). Boundary alterations, reapportioned electoral districts, and new school board members do not create a new school district, however, any more than annexations, reapportioned city council districts, and newly elected council representatives create a new city.¹² *See Weirs Beach*, 598 A.2d at 867-68 (ruling that detachment of portion of a city is a mere boundary alteration that does not constitute change in the city’s form of government, because city government of the territory remaining within the city continues unchanged). While reapportionment and new elections obviously implicate the self-governance interests of residents of the remainder of the existing district, and thus must be the subject of voter approval at some point, they are not at issue in the new district referendum itself, and thus may be dealt with in a subsequent election restricted to residents of the remainder of the existing district, as S.B. 30 provides. *See* UTAH CODE ANN. § 53A-2-118.1(3)(a)(iii).

Home Rule and Local Self-Determination. A second, complementary State interest served by S.B. 30's restriction of voting rights to persons residing within the boundaries of a proposed new district is promotion of home rule and local self-determination. *See City of New York*, 557 N.Y.S.2d at 917; *cf. Lockport*, 430 U.S. at 272 (suggesting that larger State subdivisions may be “more remote and less responsive to voters’ individual influence”); *Moorman*, 504 F.Supp. at 476 (same). The State might rationally have concluded that local self-determination is best promoted when the question whether smaller school districts should be formed from larger ones is decided by voters in the proposed smaller districts, rather than those in the large, multi-jurisdictional ones.

Incentive to Improve Public Education. A final State interest served by S.B. 30's restriction of voting rights to persons residing within the boundaries of a proposed new district, also complementary to the first two, is the encouragement of higher quality public education in multi-jurisdictional school districts. *Cf. Lockport*, 430 U.S. at 272 (making this argument with respect to the relative quality of services provided by county government and its various subdivisions); *Moorman*, 474 F.Supp. at 476-77 (speculating that “submitting annexation questions to a vote would require the core [annexing] cities to do a better selling job, and indeed be more efficient”). The State might rationally have concluded that the threat of new school district detachment posed by S.B. 30 would create an additional incentive to large school districts to be responsive to resident demands for public education, so as to deter such residents from detaching themselves and forming smaller school districts.

CONCLUSION

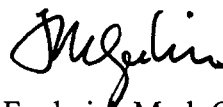
Where the interests of voters in a referendum are substantially different, as they are in a voter referendum over whether to detach certain territory from an existing State subdivision and form a new subdivision, the authorities are virtually unanimous that the State may restrict and even eliminate the voting rights of some voters, while permitting the exercise of such rights by other voters, so long as the distinction between such voters is rationally related to a legitimate State goal

¹² The Jordan School District offered no authority for its contention that these factors create a new political subdivision of the State. *See Jordan District Opinion*, at 8-9.

or interest. S.B. 30's provision of voting rights to residents of a proposed new school district, and denial of voting rights to residents of the remainder of the existing district, is rationally related to the State's legitimate interests in promoting democratic self-governance, home rule and local self-determination, and higher quality public education, all of which are present to a significantly greater degree among voters within a proposed new district.

Accordingly, S.B. 30's failure to provide for approval of a new school district by voters residing outside of the proposed boundaries of the new district does not deprive such voters of their fundamental right to vote, and is consistent with the equal protection mandate of "one person, one vote."

Very truly yours,

A handwritten signature in black ink, appearing to read "F. Gedicks", written in a cursive style.

Frederick Mark Gedicks